IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.1074 of 1998.

Mrs.Suvasini Satyanarayan Narisetti .. Appellant

vs.

M/s. Prime Construction & Ors. .. Respondents

K.K.Malpathak, Advocate for the Appellant.

None for the Respondent.

CORAM : A.S.OKA, J.
DATED : 1st February, 2005.

ORAL JUDGMENT :

1. Heard learned Counsel appearing for the appellant. None for the respondents. By the order impugned in this Appeal from Order, the learned trial Judge rejected the application for temporary injunction made by the appellant/original plaintiff. Perusal of the record shows that on 5.3.1999 Civil Application No.10344 of 1998 in this appeal was heard. This Court issued rule and granted ad-interim relief in terms of prayer a(i) which reads thus :

"(i) restrain the Defendants, their servants, agents or any other person claiming through them from transferring, assigning or disposing or parting with possession or in any other manner dealing with or creating any third party interest in respect of Row House No.4 or the said Row House No.3 in the building under Construction in Silver Nest Co-operative Housing Society Ltd., Plot No.89, Sector 15, KoperKhairne, New Bombay."

The said order is operating till today.

2. The appellant filed Special Civil Suit No.2 of 1995 against the respondents inter alia for declaration that agreement entered into between the appellant and respondents on 7.2.1992 for sale of row house is valid and subsisting. A prayer was made for specific performance of the agreement dated 7.2.1992. The application at exhibit 5 is made by the appellant/plaintiff in which a prayer was made for temporary injunction

restraining the respondents from transferring or parting with the possession of the row house no.4 or row house No.3. Another prayer made in the said application is for mandatory injunction directing the respondents to complete the construction of row house no.4 or row house no.3 and further directing the respondents to had over possession of the row house no.4 or row house no.3. On 4.2.1995, the learned trial Judge directed the parties to maintain status quo. By order dated 18.3.1995 order of status-quo was continued till disposal of the application for temporary injunction at exhibit 5. The application for temporary injunction was heard after lapse of three years and the same was rejected.

3. The learned Counsel appearing for the appellant submitted that as the substantive suit for declaration and specific performance is still pending in the trial Court, the respondents can not be permitted to create third party interest in respect of row house no.4 or row house No.3. He submitted that the Interim Relief Order of

status-quo granted by the trial Court operated from 4.2.1995 till 19.5.1998 and from 5.3.1999 ad interim injunction granted by this Court is operating in favour of the appellant. He submitted that the ad interim order passed by this Court deserves to be continued till the final disposal of the appeal.

4. None appears for the respondents. By order dated 17.1.2005 on the application made by Shri Vinay Sonpal, the Advocate for the respondents, this Court permitted him to withdraw his vakalatnama. It is noted in the said order that intimations have been sent by the said Advocate to the respondents and the said intimations have been received by the respondents. It is also noted in the said order that a letter was written on 6.1.2005 by the respondent Nos.2 and 3 to the said advocate stating therein that some other advocate has been engaged.

5. As substantive suit for declaration and specific performance is pending in the trial Court and as a limited prohibitory relief is operating

in favour of the appellant from the year 1995, in my view, ad-interim relief granted by this Court deserves to be continued till final disposal of the suit. As the prohibitory order is in force almost for last 10 years and as this appeal is preferred against the interim order passed pending a civil suit, I am not recording any findings on merits especially when there is no contest by the other side. Suffice is to say that in a suit of the nature filed by the Appellant, the Respondents cannot be allowed to transfer the property till the disposal of the suit.

6. Hence I dispose of the appeal by passing following order :

i) The ad-interim order dated 5.3.1999 in Civil Application No.10344 of 1998 will continue to operate till final disposal of the suit.

ii) The learned trial Judge will hear and decide the suit expeditiously without being influenced by prima facie findings recorded in the impugned order and grant of ad-interim relief by

this Court.

iii) Appeal is disposed of in above terms with no orders as to cost.

. Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)